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Supreme Court of the United States

OCTOBER TERM, 1961

No. 166

**MARINE ENGINEERS BENEFICIAL
ASSOCIATION, ET AL., PETITIONERS,**

vs.

INTERLAKE STEAMSHIP COMPANY, ET AL.

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF MINNESOTA**

PETITION FOR CERTIORARI FILED JUNE 21, 1961

CERTIORARI GRANTED OCTOBER 9, 1961

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1961
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I N D E X

| | Original | Print |
|--|----------|-------|
| Record from the District Court of St. Louis County, State of Minnesota, 6th Judicial District | | |
| Complaint | 8 | 1 |
| Notice of motion and motion to dismiss | 18 | 7 |
| Answer * | 19 | 8 |
| Order of submission | 20 | 8 |
| Findings of fact | 21 | 9 |
| Conclusions of law | 28 | 13 |
| Order for temporary injunction | 30 | 15 |
| Memorandum | 33 | 17 |
| Statement of Mr. Heaney | 43 | 24 |
| Writ of injunction | 46 | 26 |
| Order amending findings of fact and temporary injunction | 56 | 28 |
| Findings of fact | 57 | 29 |
| Conclusions of law | 64 | 34 |
| Order for temporary injunction | 66 | 36 |
| Memorandum | 69 | 37 |

Original Print

| | | |
|---|-----|----|
| Record from the District Court of St. Louis County, State of Minnesota, 6th Judicial District—Con- | | |
| tinued | | |
| Writ of injunetion | 70 | 38 |
| Stipulation as to record | 73 | 40 |
| Order on stipulation re injunetion | 74 | 41 |
| Writ of permanent injunetion | 75 | 41 |
| Affidavit of Herbert L. Daggett | 79 | 43 |
| Proceedings in the Supreme Court of Minnesota | 82 | 45 |
| Opinion, Knutson, J. | 82 | 46 |
| Judgment | 98 | 61 |
| Clerk's certificate (omitted in printing) | 99 | 62 |
| Order allowing certiorari | 100 | 62 |

[fol. 8]

**IN DISTRICT COURT OF ST. LOUIS COUNTY
STATE OF MINNESOTA
6th JUDICIAL DISTRICT**

INTERLAKE STEAMSHIP COMPANY, a corporation, and
PICKANDS-MATHER & Co., a co-partnership, Plaintiffs,

vs.

MARINE ENGINEERS BENEFICIAL ASSOCIATION, CHARLES LA-
PORTE, FRED L. BEATTY, JOHN DOE, RICHARD ROE,
and MARINE ENGINEERS BENEFICIAL ASSOCIATION, LOCAL
101.

COMPLAINT

Plaintiffs for their complaint against defendants allege:

1. Plaintiff Interlake Steamship Company is a corporation organized and existing under the laws of the State of Delaware having its principal office and place of business at [fol. 9] 2,000 Union Commerce Building, Cleveland, Ohio. Plaintiff Interlake Steamship Company is engaged principally in the operation of 32 bulk cargo vessels on the Great Lakes, transporting principally iron ore, coal, stone and grain between numerous Great Lakes ports, including Duluth, Minnesota, in the United States and Canada. Plaintiff normally employs approximately 1,076 individuals in the actual operation of its vessels. Plaintiff Pickands Mather & Co. is a co-partnership with its principal office and place of business at the Union Commerce Building in Cleveland, Ohio, and it also maintains offices in Duluth, Minnesota. Plaintiff Pickands Mather & Co. is the managing agent for plaintiff Interlake Steamship Company.

2. Defendant Marine Engineers Beneficial Association, AFL-CIO is a voluntary unincorporated association affiliated with the AFL-CIO which admits to membership engineers and other similar types of supervisory personnel employed in the operation of commercial vessels.

3. Defendant Charles LaPorte is a member of Local 101, Marine Engineers Beneficial Association, AFL-CIO and is the business representative of that organization including said organization's activities in Duluth, Minnesota.

4. Defendant Fred L. Beatty is a member of Local 101, Marine Engineers Beneficial Association, AFL-CIO.

[fol. 10] 5. All other persons who have acted and are acting in concert with the defendants named herein are a part of the defendant class and are made defendants herein under the name and style of John Doe and Richard Roe, their true names being unknown to plaintiffs.

6. Each of the individual defendants named herein is sued individually and as an officer, agent, or member, as the case may be, of the defendant organization, and such defendant officers, agents, committeemen and members mentioned above are duly authorized to and do represent and receive orders and directions from said defendant organization in respect to all matters complained of herein.

7. The names of many of the members of the defendant organization are unknown to plaintiffs and, if known, are too numerous to be included herein. The questions herein involved are of common and general interest to all of such members as a class. Each named defendant who is sued individually and as an officer, agent, committeeman or member of defendant organization is in fact the duly authorized representative of such organization and its members and is sued as such and as the representative of a class consisting of the members of such organization. Plaintiffs say that the trial of the issues herein may be fairly had through the defendants named herein.

[fol. 11] 8. No labor dispute nor any dispute concerning wages, hours and other terms and conditions of employment, exists between plaintiffs and any of its supervisory employees who would be eligible for membership in said defendant organization.

9. Since on or about November 12, 1959, defendants, and each of them, and others associated and acting in con-

cert with them did and threatened to do the following things:

(a) Unlawfully picketed the plaintiffs' vessel Samuel Mather and picketed the entrance to dock No. 1 of the Carnegie Dock & Fuel Company located at 600 Garfield Avenue, Duluth, Minnesota with banners bearing the legend

"Pickards [sic] Mather Unfair to Organized Labor. This Dispute Only Involves P.M. M.E.B.A. Local 101".

"M.E.B.A. Local 101. AFL-CIO Requests Pickards [sic] Mather Engineers to Join With Organized Labor to Better Working Conditions. This Dispute Only Involves P.M."

(b) Induced and persuaded individuals employed by Carnegie Dock & Fuel Company to engage in a stoppage or suspension of work and a refusal to perform the services of their employment in connection with the unloading of said vessel have prevented and interfered with such loading.

[fol. 12] (c) Brought about a violation by said Carnegie Dock & Fuel Company of the terms of its contract relative to the unloading of plaintiffs' vessel.

(d) Interfered with plaintiffs' conduct of its normal business operations and with plaintiffs' services to its customers in the ordinary course of its business.

(e) Interfered with the operation of vehicles and the operators thereof when neither the owners nor operators of said vehicles were at the time parties to any strike.

(f) Having more than one person picket a single entrance to a place of employment where no strike is in progress.

(g) Compelling or attempting to compel persons to join said labor organization by threatened or actual unlawful interference with his person.

(h) Interfering with the free and uninterrupted use of a public road and methods of transportation or conveyance and wrongfully obstructing ingress to and egress from said Carnegie Dock & Fuel Company and said Steamer Samuel Mather.

(i) To picket each and every vessel of the Inter-lake Steamship Company coming to or remaining in the Duluth-Superior harbor.

(j) By mass picketing and a showing or demonstration of force and threats of force and by other means intimidating and coercing plaintiffs' employees and the employees of Carnegie Dock & Fuel Company in violation of the statutes of the State of Minnesota and in further violation of the rights of said employees, all in violation of Minnesota Statutes.

10. Such picketing has resulted in a violation by the Carnegie Dock & Fuel Company of the terms of its contract relative to the unloading of plaintiffs' vessel, has interfered with plaintiffs' conduct of its normal business operations and with the conduct of said Carnegie Dock & Fuel Company's normal business operations.

11. Defendant organization and individuals, and the other individuals acting in concert and associated with them, are conducting such picketing for the purpose and with the intent of coercing and compelling plaintiffs to recognize and bargain with defendant organization as representative of plaintiffs' supervisory employees and to require plaintiffs to coerce and compel their supervisory employees to become members of defendant organization. By the express terms and provisions of Sec. 14 (a) thereof, the defendant organization is entirely excluded from the terms and provisions of the National Labor Relations Act and by the terms of Minnesota Statute 179.01, Subd. 4, said supervisors are not employees and such picketing is for an unlawful purpose and objective.

[fol. 14] 12. Defendant organization and individuals, and the other individuals acting in concert and associated with them have violated Minnesota Statute 179.11 (2), (4), (5), (6), (7), and (8).

13. A continuation and extension of the unlawful actions and conduct of the defendants, which will continue and be extended to all other of plaintiffs' vessels in the Duluth-Superior harbor unless enjoined by an Order of this Court, will result in possible and probable danger of injury to plaintiffs' employees and the employees of Carnegie Dock & Fuel Company and other employees similarly situated and will result in irreputable [sic] injury and loss to plaintiffs, the amount of which cannot be presently ascertained plaintiffs have no adequate remedy at law.

14. The picketing by defendants as alleged herein will have extensive and widespread repercussions. Such picketing will have particularly drastic effects at the present time inasmuch as virtually no deliveries of iron ore, stone and coal were made to the lower Great Lakes region during the recent long steel strike and such supplies at the mills are very low at the present time. The end of the season of navigation on the lakes is rapidly approaching and operations at this time of the year are always subject to the possibility of adverse weather conditions. Unless plaintiffs' entire fleet can operate to the fullest possible extent between [fol. 15] now and the end of the navigation season, certain mills will not have sufficient stockpiles of ore and other materials on hand to operate at capacity and without interruption until the resumption of navigation in the spring of 1960 with resultant hardship on the employees of such mills and on the economy of the midwest region.

Wherefore, plaintiffs pray that this Court issue an injunction restraining and enjoining the defendants, and each of them, their officers, agents, representatives and employees, and all persons acting in aid of or in conjunction or in concert with them, or any of them, and all others to whom knowledge of said order shall come from:

1. Picketing in any manner, peaceful or otherwise at or in the vicinity of any of plaintiffs' vessels, including the vessel Samuel Mather, and the dock operated by the Carnegie Dock & Fuel Company and located at 600 Garfield Avenue in Duluth, Minnesota.

2. Interfering in any way with any of plaintiffs' employees in connection with ingress or egress to or from any

of plaintiffs' vessels in the Duluth harbor including the vessel Samuel Mather.

3. Interfering in any way with the performance of services by the employees of the Carnegie Dock & Fuel Company or any other dock company in connection with the loading or unloading of any of plaintiffs' vessels, including the vessel Samuel Mather.

[fol. 16] 4. Loitering, grouping or congregating at or near any of plaintiffs' vessels in the Duluth harbor including the vessel Samuel Mather or at or in the vicinity of the dock operated by Carnegie Dock & Fuel Company or at or near any entrances or exits to or from said dock or any other dock in the Duluth harbor at which any of plaintiffs' vessels are moored.

5. Creating any disorder in, at or near any of plaintiffs' vessels, including the vessel Samuel Mather, and from threatening, coercing, intimidating, molesting or interfering with any of plaintiffs' officers, agents, and employees and others having business with plaintiffs at or on any of their vessels, including the vessel Samuel Mather.

6. Committing any acts of force, violence, intimidation or coercion in, at or near any of plaintiffs' vessels including the vessel Samuel Mather, or at any place against any of plaintiffs' officers, agents, representatives and employees.

7. Ordering, inducing, intimidating, coercing, or attempting to order, induce, intimidate or coerce any of plaintiffs' employees with the intent or effect of causing them to fail or refuse to perform any services for plaintiffs.

8. Ordering, inducing, intimidating, coercing or attempting to order, induce, intimidate or coerce any person, firm or corporation or the employees of any person, firm or corporation or any other labor organization or the members [fol. 17] of any other labor organization with the intent or effect of causing them to fail or refuse to perform any services in connection with the loading or unloading of any of plaintiffs' vessels.

9. Conspiring or continuing to conspire or act in concert in combination with each other or with any other individual, person, labor organization, firm or corporation whatsoever to carry on, perform, or do any of the actions hereinbefore in this complaint described, or for which relief has been hereinabove prayed.

10. Advising, protecting, aiding, assisting or abetting any person or persons in the commission of any of the acts hereinbefore enumerated.

Plaintiffs further pray that pending the final hearing and determination of the issues hereof, a temporary injunction be issued by this Court, for such other and further relief, either permanent or temporary, as equity and plaintiffs' cause may require and for their costs herein expended.

Nye, Montague, Sullivan & McMillan, By Edward T. Fride, 1200 Alworth Building, Duluth 2, Minnesota, Attorneys for Plaintiffs.

[fol. 18] *Duly sworn to by Kent Davis, jurat omitted in printing.*

IN DISTRICT COURT OF ST. LOUIS COUNTY

NOTICE OF MOTION AND MOTION TO DISMISS

To the plaintiffs above named:

You will please take notice that before the Judge of the above named court in the Court House, in the City of Duluth and said County, on November 18, 1959, at 2:00 p.m. the above named defendants will make a special appearance for the purpose of moving the court to dismiss the above entitled action on the grounds that the court does not have jurisdiction of said action.

Lewis, Hammer, Heaney, Weyl & Halverson, By Gerald W. Heaney, 700 Providence Building, Duluth 2, Minnesota, Attorneys for Defendants.

IN DISTRICT COURT OF ST. LOUIS COUNTY

ANSWER

Defendants, for their answer to the complaint herein:

I.

Denies each and every allegation therein contained except as may hereinafter be admitted, qualified or explained.

II.

Admits the allegations contained in paragraphs 1, 2, 3, 4, and admits the allegation in paragraph 9 to the extent that picketing occurred on or about November 12, 1959, at or near the place indicated in said paragraph.

[fol. 20] Wherefore, defendants pray that the complaint herein be dismissed.

Lewis, Hammer, Heaney, Weyl & Halverson, By
Gerald W. Heaney, 700 Providence Building,
Duluth 2, Minnesota, Attorneys for Defendants.

IN DISTRICT COURT OF ST. LOUIS COUNTY

ORDER OF SUBMISSION—December 1, 1959

This cause came on for hearing before the Court on the 18th day of November, 1959, pursuant to Order to Show Cause heretofore issued herein, on plaintiffs' motion for a temporary injunction, and was submitted to the Court on the 24th day of November, 1959. Nye, Montague, Sullivan & McMillan, by Edward T. Fride, and Baker, Hostetler & Patterson, by Charles D. Johnson, appeared for the plaintiffs, and Lewis, Hammer, Heaney, Weyl & Halverson, by Gerald W. Heaney, appeared for the defendants, and the Court, having heard the testimony of the witnesses and the arguments of counsel and being fully advised in the premises, now makes the following Findings of Fact, Conclusions of Law and Order for Temporary Injunction:

[fol. 21]

IN DISTRICT COURT OF ST. LOUIS COUNTY

FINDINGS OF FACT—December 1, 1959

1. Plaintiff Interlake Steamship Company, a Delaware corporation (hereinafter referred to as "Interlake"), and plaintiff Pickands Mather & Co., a copartnership having its principal office and place of business at Cleveland, Ohio, are respectively the owner and operating agent of a fleet of Great Lakes bulk cargo vessels which transports coal, iron ore and other materials between numerous Great Lakes ports in the United States and Canada, including Duluth, Minnesota.
2. Defendant Marine Engineers Beneficial Association Local 101, (hereinafter referred to as "MEBA") as a voluntary unincorporated association which admits to membership licensed marine engineers employed on commercial vessels on the Great Lakes.
3. Defendant Charles LaPorte is an agent and business representative of defendant MEBA Local 101, and his duties include the direction of said defendant's activities in Duluth, Minnesota.
4. On November 11, 1959, the Interlake vessel Samuel Mather arrived at the dock of the Carnegie Dock & Fuel Company at Duluth, Minnesota, with a cargo of coal to be unloaded at said dock. The unloading of the vessel by the employees of the Carnegie Dock & Fuel Company, which would ordinarily require about 34 hours, commenced shortly after its arrival.

[fol. 22] 5. At approximately 6:30 a.m., November 12, 1959, five or six individuals commenced picketing the single private road entrance to the dock and walked continuously around in a tight circle across that road. Two of these individuals carried signs which read:

"Pickands Mather Unfair to Organized Labor. This Dispute Only Involves P-M. M.E.B.A. Loc. 101 AFL-CIO."

Two of these individuals carried signs which read:

"M.E.B.A. Loc. 101, AFL-CIO. Request P-M Engineers to Join With Organized Labor to Better Working Conditions. This Dispute Only Involves P-M."

6. From the time of the commencement of this picketing, the employees of the Carnegie Dock & Fuel Company, although having entered the premises of their employer despite such picketing and having performed other duties of their employment, have failed and refused to perform any services whatsoever in connection with the unloading of the Samuel Mather although ordered to do so on numerous occasions.

7. As a further result of such picketing, certain independent truck drivers failed and refused to enter the dock premises to take delivery of coal from the dock company and left their vehicles parked on the single road entrance [fol. 23] to the dock for approximately two hours on the morning of November 12, 1959.

8. Defendant Charles LaPorte stated at or near the picket line on the morning of November 12, 1959, that it was the intention of MEBA Local 101 to picket Interlake vessels wherever it could locate them in the Duluth, Minnesota, harbor.

9. The picketing at the dock company premises continued until the service of the temporary restraining order issued by this Court in the afternoon of November 12, 1959. Despite the absence of formal picketing at the dock company's premises since that time, the dock company employees have continued to refuse to unload the Samuel Mather.

10. The Carnegie Dock & Fuel Company dock at Duluth, Minnesota, has facilities for the unloading of only one vessel at a time. The Interlake vessel Pickands, also loaded with coal for the same dock, arrived at Duluth, Minnesota, the morning of November 15, 1959, and has been anchored outside the harbor ever since that date pending the unloading of the Samuel Mather.

11. At approximately 10:55 p.m., November 12, 1959, four or five individuals appeared at the entrance to the Duluth, Minnesota, plant of Interlake Iron Corporation and walked continuously across the entrance, blocking the [fol. 24] street, in a circle carrying signs bearing the legends set forth in paragraph 5 hereof. At that time, the Interlake vessel Mills was unloading a cargo of coal for use at the Interlake Iron plant at the plant dock approximately 3,000 feet from the place of such picketing. The picketing at the entrance to the Interlake Iron Corporation plant ceased approximately one hour later upon the service of the temporary restraining order upon the pickets.

12. Prior to the commencement of the picketing as described above on November 12, 1959, there had been no contact whatsoever between plaintiffs and defendants, nor had defendant MEBA Local 101, or anyone acting for or on its behalf, made any demand or request whatsoever, either written or oral, of plaintiffs or either of them.

13. All engineers and assistant engineers employed on Interlake vessels stand watches during which they are in charge of and responsible for the operation and condition of the vessel's propulsion mechanism and responsibly direct, control and supervise the work of the firemen, oilers and coal passers on duty during such watch; they hire, fire, transfer and change the status of and discipline the persons working under them and have authority to and do make effective recommendations respecting the employment and tenure of employment of the people working under them; [fol. 25] they handle initially grievances of the employees who are subject to their supervision; the exercise of authority by the engineers and assistant engineers requires the use of independent judgment and discretion; and all such engineers are required to be licensed by the United States Coast Guard.

14. All of the engineers and assistant engineers employed on all Interlake vessels are "supervisors" within the meaning of the National Labor Relations Act, as amended.

15. The acts of the defendants specified herein have caused and are causing serious economic and monetary loss

and irreparable damage to the plaintiffs by preventing the unloading and subsequent loading of the Steamers Mather and Pickands at a loss of \$6,000 a day exclusive of profit and if defendants' threats to picket all Interlake vessels coming into the Duluth harbor were carried out, such would result in interference with the majority of plaintiffs' vessels.

16. The further purpose and objective of the picketing and activities of MEBA Local 101, hereinabove described, is to secure from plaintiffs the same type of agreement or understanding which it has obtained from other employers operating bulk cargo vessels on the Great Lakes. Every agreement or understanding between said defendant and other Great Lakes vessel companies includes a provision [fol. 26] requiring every licensed engineer hired after a specified date to become a member of said defendant organization within thirty days from the date of his employment as a condition of continued employment.

17. The further purpose and objective of defendants' picketing and activities as described above was to coerce, intimidate and induce plaintiffs to force, compel or induce engineers employed on Interlake vessels to become members of MEBA Local 101 and was for the purpose of injuring plaintiffs in their business because of their refusal to in any way interfere with the rights of engineers employed on Interlake vessels to join or not to join said defendant organization.

18. The further purpose and objective of defendants' picketing and activities as described above was to coerce and intimidate plaintiffs in order to secure recognition from plaintiffs of MEBA Local 101 as the collective bargaining agent for the licensed engineers employed on Interlake vessels.

19. MEBA and MEBA Local 101 have consistently contended and taken the position in all proceedings involving them, or either of them, before the Federal Courts and before the National Labor Relations Board that neither such Courts nor the Board have any jurisdiction over them

because they are not "labor organizations" within the meaning of the National Labor Relations Act, as amended.

[fol. 27] 20. Defendant Marine Engineers Beneficial Association and defendant Local 101 do not represent a majority of the licensed engineers employed by plaintiffs, nor are such organizations the authorized collective bargaining representative of said engineers.

21. The activities of defendants above described constitute compulsion to plaintiffs to commit an unfair labor practice within the meaning of Minnesota Statutes 179.12 and constitute a violation of Minnesota Statutes 179.12 (3).

22. The activities of the defendants above described do not constitute a violation of Minnesota Statutes 179.11.

23. The activities of defendants did not include the use of violence or threats of violence.

24. The policy of the State of Minnesota protects the freedom of employees to decline to associate with his fellows and assures freedom of association, self-organization and designation of representatives of his own choosing free from the interference, restraint or coercion of employers.

25. The activities of defendants above described are in violation of the public policy of Minnesota as declared by the statutes and the Supreme Court.

[fol. 28]

IN DISTRICT COURT OF ST. LOUIS COUNTY

CONCLUSIONS OF LAW—December 1, 1959

1. This case does not involve any "labor organization" within the meaning of the National Labor Relations Act, as amended.

2. All of the engineers and assistant engineers employed on all Interlake vessels are "supervisors" within the meaning of that term as defined in the National Labor Relations Act, as amended.

3. This Court has jurisdiction of this action since no "labor organization" subject to the jurisdiction of the Na-

tional Labor Relations Board is involved in this case and since organizational activities of an organization attempting to secure collective bargaining rights for supervisory employees are excluded from the jurisdiction of the National Labor Relations Board and do not constitute protected activities under the National Labor Relations Act, as amended.

4. In attempting to require plaintiffs to recognize MEBA Local 101 as the collective bargaining agent for certain of plaintiffs' supervisory employees, defendants are seeking an unlawful objective contrary to the State and Federal policies as declared by the Minnesota Legislature and Minnesota Courts and as declared by Congress in Section 14 (a) of the National Labor Relations Act, as amended.

5. The provisions of the Minnesota Labor Relations Act (Minn. Stats. Sections 179.01 et seq.), except for the provisions of Sec. 179.16, apply to the defendants inasmuch as supervisors are not excluded from the definition of the term "employee" contained in said Act and organizations of supervisors are not excluded from the definition of the term "labor organization" contained in said Act.

6. The picketing and other acts of the defendant as described herein for the purposes stated herein are intended to require or compel the plaintiffs to commit an unfair labor practice within the meaning of Minn. Stats. Sec. 179.12, Subd. 3, particularly in the light of the public policy of the State of Minnesota as declared in Minn. Stats. Sections 179.10 and 185.08, and therefore represent unlawful acts.

7. The acts of the defendants in seeking to require plaintiffs to compel, coerce, or require licensed engineers employed on Interlake vessels to become members of MEBA Local 101 irrespective of their wishes, represent violations of the public policy of the State of Minnesota as declared in Minn. Stats. Sec. 185.08, and therefore represent an unlawful objective.

8. Plaintiffs are threatened with irreparable injury and damage by defendants' picketing and other activities and plaintiffs have no adequate remedy at law.

9. The Minnesota Anti-Injunction Act does not apply to this proceeding and does not prevent the issuance of a [fol. 30] temporary injunction against the activities of the defendants in seeking unlawful objectives in violation of the expressly declared policy of both State and Federal Statutes, especially the policy of the State of Minnesota as declared in Sec. 185.08 of the Anti-Injunction Act; Minnesota Statute 179.14 specifically excepts the Anti-Injunction Act from applicability where a violation of 179.12 is found; in any event the record in this proceeding discloses the existence, or the inapplicability, of each condition to the granting of injunctive relief specified in Minn. Stats. Sec. 185.13.

IN DISTRICT COURT OF ST. LOUIS COUNTY

ORDER FOR TEMPORARY INJUNCTION—December 1, 1959

It is ordered, that upon the filing within two days of a bond by plaintiffs, approved by me, in the penal sum of Two Thousand Dollars (\$2,000.00), a temporary injunction issue commanding defendants, and each of them, and all persons acting in aid or in conjunction or in concert with them, to refrain from:

1. Picketing in any manner, peaceful or otherwise, at or in the vicinity of any of plaintiffs' vessels in the Duluth harbor, including the vessel Samuel Mather, and the dock operated by Carnegie Dock & Fuel Company at 600 Garfield Avenue, Duluth, Minnesota, and any other dock or similar company at or near which any of plaintiffs' vessels are moored for purposes of loading or unloading.

[fol. 31] 2. Interfering in any way with any of plaintiffs' employees in connection with ingress or egress to or from any of plaintiffs' vessels in the Duluth harbor including the vessel Samuel Mather.

3. Interfering in any way with the performance of services by the employees of Carnegie Dock & Fuel Company, and any other dock or similar company at

or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading.

4. Loitering, grouping or congregating at or near any of plaintiffs' vessels in the Duluth harbor including the vessel Samuel Mather, or at or in the vicinity of the dock operated by Carnegie Dock & Fuel Company, and any other dock or similar company at or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading, or at or near any entrances or exits to or from any of said docks.

5. Creating any disorder in, at or near any of plaintiffs' vessels in the Duluth harbor, including the vessel Samuel Mather, and from threatening, coercing, intimidating, molesting or interfering with any of plaintiffs' officers, agents, and employees and others having business with plaintiff at or on any of its vessels in said harbor, including the vessel Samuel Mather.

[fol. 32] 6. Committing any acts of force, violence, intimidation or coercion in, at or near any of plaintiffs' vessels in the Duluth harbor, including the vessel Samuel Mather, or at any place against any of plaintiffs' officers, agents, representatives and employees.

7. Ordering, inducing, intimidating, coercing, or attempting to order, induce, intimidate or coerce any of plaintiffs' employees with the intent or effect of causing them to fail or refuse to perform any services for plaintiff.

8. Ordering, inducing, intimidating, coercing or attempting to order, induce, intimidate or coerce any person, firm or corporation or the employees of any person, firm or corporation or any other labor organization or the members of any other labor organization with the intent or effect of causing them to fail or refuse to perform any services in connection with the loading or unloading of any of plaintiffs' vessels.

9. Conspiring or continuing to conspire or act in concert in combination with each other or with any other individual, person, labor organization, firm or

corporation whatsoever to carry on, perform, or do any of the actions hereinbefore in this order prohibited.

10. Advising, protecting, aiding, assisting or abetting any person or persons in the commission of any [fol. 33] of the acts hereinbefore prohibited.

until final judgment herein or until further order of the Court.

It is further ordered, that until the filing of said bond within said two days, the temporary restraining order issued herein on November 12, 1959, be continued in full force and effect.

Dated this 1st day of December, 1959.

By the Court: Mark Nolan, Judge thereof.

IN DISTRICT COURT OF ST. LOUIS COUNTY

MEMORANDUM—December 1, 1959

Plaintiffs, as the owner and operating agent of a fleet of Great Lakes bulk cargo vessels, are seeking a temporary injunction to prevent the picketing of its vessels and the dock at which they call in the Duluth area by Marine Engineers Beneficial Association Local 101 and various individual defendants. Picketing by the defendants started early on the morning of November 12, 1959, at the Duluth dock of the Carnegie Dock & Fuel Company where the Interlake vessel Samuel Mather was being unloaded. The dock workers stopped unloading coal from the vessel when the picketing started and have continued to refuse to unload it, although they have continuously entered the dock [fol. 34] property and have performed other services for their employer. The defendants also conducted picketing for a brief period the night of November 12, 1959, at the Interlake Iron Corporation plant in Duluth where another Interlake steamship was unloading coal.

The initial question presented by the motion for a temporary injunction relates to the jurisdiction of this Court

over this action. While it is clear that State courts lack jurisdiction over actions involving activities which are covered within the scope of the National Labor Relations Act and within the jurisdiction of the N.L.R.B., it is likewise clear that State courts retain jurisdiction over matters not covered by the Act and excluded from the Board's jurisdiction. *Garner v. Teamsters' Union*, 346 U. S. 485 (1953), and *McLean Distributing Co. v. Brewery and Beverage Drivers*, 254 Minn. 204, 94 N. W. 2d 514 (1959), cert. den. 360 U. S. 917.

Supervisory employees are specifically excluded from the definition of the term "employees" in Section 2(3) of the National Labor Relations Act and groups of supervisors are excluded from the definition of the term "labor organization" in Section 2(5) of the Act. In addition, Section 14(a) of the Act provides that no employer subject to the Act shall be compelled to deem supervisors as employees for the purpose of any law, either national or local relating to collective bargaining.

The record in this case does not show that MEBA Local 101 admits to membership any non-supervisory employee, [fol. 35] and in any event it is clear that its membership is composed primarily and almost exclusively of supervisors. The case of *Bull Steamship Co. v. MEBA*, 250 F. 2d 332 (1957) holds that MEBA is not a labor organization within the meaning of the N.L.R.A. and that the Federal courts have no jurisdiction over it notwithstanding the fact that it might admit to membership some few non-supervisory individuals.

Insofar as the Interlake situation is concerned, the record discloses that MEBA Local 101 is seeking to organize or secure bargaining rights for licensed engineers. Without reciting the detailed evidence, the record in this case plainly shows that all of the engineers and assistant engineers employed on the Interlake vessels are supervisors within the meaning of that word as defined in Section 2(11) of the N.L.R.A. In 1949 the N.L.R.B. held in the case of *Globe Steamship Co., et al. and Great Lakes Engineers Brotherhood, Inc.*, 85 N.L.R.B. 475, that the engineers and assistant engineers on Interlake vessels were supervisors and that

an organization claiming to represent them could not obtain an election to secure collective bargaining rights. The record in this case shows that there has been no change in the duties or functions of Interlake's licensed engineers since the date of that decision.

MEBA Local 101 admitted on the record in this case that it could not secure collective bargaining rights for Inter-[fol. 36] lake's licensed engineers through an N.L.R.B. election. Its activities which plaintiffs seek to enjoin are, therefore, completely excluded from the Act and from the Board's jurisdiction, and the State court jurisdiction remains unimpaired.

It is particularly significant that MEBA has contended in all proceedings involving it in the Federal courts and before the N.L.R.B. that it is not a labor organization. Its President made an unequivocal affidavit to that effect in the Bull case. This court must conclude that MEBA is bound by its own admissions and the position which it has taken in other proceedings and cannot be permitted to attempt to place itself above any law, by claiming in this Court that the Federal courts and the Board have exclusive jurisdiction.

This case therefore falls within the doctrine enunciated this year by our Supreme Court in the McLean case, *supra*, namely, that State courts in Minnesota have jurisdiction to enjoin picketing and other acts which are not covered within the scope of the N.L.R.A. or the jurisdiction of the N.L.R.B. The case of *Norris Grain Co. v. Seafarers International Union*, 232 Minn. 91, 46 N. W. 2d 94 (1950) is not applicable since that case involves organizational picketing by a union attempting to organize unlicensed seamen (not supervisors) who were entitled to seek an N.L.R.B. election [fol. 37] to obtain collective bargaining rights, the exact opposite of the facts presented by this case.

The Court therefore holds that it has jurisdiction of this particular action.

There is no inconsistency in the application of the Minnesota Labor Relations Act (Section 179.01 et seq.) to this case. Supervisors are certainly employees in any accepted sense of the term and are excluded from the definition of

employees in the N.L.R.A. only because of an express provision to that effect. No such exclusion appears in the definition of the term "employee" in Section 179.01, Subd. 4, of the Minnesota Act. The definition of the term in the Minnesota Act is practically identical with that in the old Wagner Act under which it was held that supervisors were employees who were covered by the Act. *Packard Motor Car Co. v. N.L.R.B.*, 330 U. S. 485 (1947). The fact that the Minnesota legislature expressly excluded supervisory employees from Section 179.16 establishes that they were not overlooked and that they were not intended to be excluded from other portions of the Act.

Section 179.12, Subd. 3, of the Minnesota Labor Relations Act provides that it shall be an unfair labor practice for an employer:

"To encourage or discourage membership in any labor organization by discrimination in regard to hire or tenure of employment or any terms or conditions of employment; ***."

[fol. 38] This Court would be credulous indeed to believe under the circumstances of this case that the defendants had no thought of coercing or compelling the plaintiffs to interfere with the right of their employees to join or not to join MEBA Local 101. Counsel for the defendants admitted on the record that MEBA Local 101 was seeking from plaintiffs the same type of agreement or understanding which it has with other Great Lakes vessel companies. Attached hereto is a copy of defendants' counsel's statement which includes this admission. This statement must be viewed in the light of the testimony of Mr. Pelfrey, Acting Secretary-Treasurer of MEBA Local 101, and the only Union witness. He stated:

"Q. What are the terms of that contract with the Tomlinson fleet, respecting union membership?

A. The same as the Pittsburgh Steamship Company; old employees do not have to join the union, all new employees must join within 30 days as a condition of employment."

He testified also that every contract between Local 101 and other Great Lakes vessel companies contained a provision requiring all licensed engineers hired after a specified date to become members of the union within thirty days following their employment as a condition of continued employment. This provision was included in the contract [fol. 39] obtained from the Tomlinson Fleet after a strike and picketing which followed a secret ballot election (not conducted by the N.L.R.B.) in which the licensed engineers of that fleet voted against representation by MEBA Local 101.

The exception in Section 179.12, Subd. 3 of the Minnesota Statutes permitting union shop contracts applies only where such contracts are negotiated voluntarily between an employer and a bargaining agent selected in accordance with Section 179.16 of the Act, the very section from which supervisors are excluded.

Thus it is a fair and reasonable conclusion from the evidence in this case that an objective of the defendants was to coerce or compel plaintiffs to commit an unfair labor practice and an unlawful act as specified in Section 179.12, Subd. 3 of the Minnesota Labor Relations Act.

This objective of MEBA Local 101 is further unlawful in the light of the express declarations of Minnesota public policy contained in Minnesota Statutes, Sections 179.10 and 185.08. Irrespective of the United States Supreme Court decision in the 1940's on the question of the relationship between the right of free speech and picketing, it is now clear from decisions of that Court during the last several years that State Courts may constitutionally enjoin all picketing where it violates a declared public policy of the State. The Court is of the opinion that the cases of International Brotherhood of Teamsters, Local 605 v. Vogt, Inc., [fol. 40] 254 U. S. 284 (1957), and Pappas v. Stacey, 151 Maine 36, 116 A. 2d 497 (1955; appeal dismissed for lack of any substantial Federal question, 350 U. S. 870) are directly in point and should be applied in this case.

Although not cited by counsel, the Court also feels that the case of Building Service Employers International Union, Local 272 v. Gazzam, 339 U. S. 532 (1950) is especially applicable and in point. The United States Supreme

Court in that case affirmed a Washington State Court injunction against organizational picketing. The injunction was granted by the State of Washington Court on the ground that the picketing violated the public policy of the State as declared by the Legislature in its Anti-Injunction Act. The section of the Washington Act relied upon by the Washington Courts is identical with Sec. 185.08 of the Minnesota Anti-Injunction Act.

The Court is therefore of the opinion that the objectives of the defendants violated expressly declared public policies of this State and were therefore unlawful.

An even stronger situation is presented for injunctive relief in this case than in the cases cited above. The present case involves an effort to secure an election and collective bargaining rights for employees who are clearly supervisors. Sec. 14 (a) of the N.L.R.A. provides that no employer shall be compelled to deem individuals defined in the Act as supervisors as employees for the purpose of [fol. 41] any law, either national or local, relating to collective bargaining. Thus unions of supervisors have no right under either State or Federal law to secure State or Federally supervised elections or to compel their recognition as collective bargaining agents. The apparent purpose of this provision was to allow employers to decide voluntarily whether or not they would recognize and bargain with unions composed of supervisory employees. Permitting a supervisory union to compel recognition and to obtain collective bargaining rights by means of picketing and economic force and coercion would completely defeat the purpose and intent of the Federal Act.

The Court therefore feels that the cases of 260 Madison Avenue Corp. v. Nelson, 284 App. 254, 26 Labor Cases, paragraph 68, 464 (N.Y. Sup. Ct., App. Div., 1954) and Safeway Stores, Inc. v. Retail Clerks International Association, 41 Cal. 2d 567, 261 P. 2d 721 (1953), both of which enjoined all picketing designed to compel the employer to bargain collectively for supervisory employees, were correctly decided and state principles which are applicable in this case.

It is the further opinion of the Court that the Minnesota Anti-Injunction Act does not prevent the issuance of a

temporary injunction in this case. Certainly, acts which violate the policy of the State as declared in the Anti-Injunction Act itself (Sec. 185.08) cannot fall within the prohibitions of that Act. Further, by the express terms of Sec. 179.14, the Anti-Injunction Act is made inapplicable to actions which would constitute unfair labor practices or unlawful acts as defined in the Minnesota Labor Relations Act.

The Bull Steamship Co. case is not in point in this connection since that case clearly involved a "labor dispute"—a conflict of terms and conditions of employment between an employer and a supervisory union which it had voluntarily recognized and contracted with as the bargaining agent for certain of its supervisory employees.

Defendants are not rendered helpless by the granting of this temporary injunction. The record discloses that there are considerable periods of time when defendants could contact engineers employed by plaintiffs including times in various ports when the engineers are off watch and consequently the majority of them go ashore and in addition, the engineers are seasonal workers and could be contacted during the off season as well. It is apparently also open to defendants to utilize the mails in an effort to acquaint such engineers with defendants' principles and policies.

The record discloses the existence of at least two organizations which seek to represent the licensed engineers employed by plaintiffs. If picketing for an unlawful purpose by defendants could not be enjoined and if as a result plaintiffs were coerced into making an agreement with defendants, plaintiffs might be subject to picketing by another organization despite the existence of an agreement with defendants.

The Supreme Court of Minnesota in *Dayton Co. v. Carpet, Linoleum, et al. Union*, 229 Minn. 87, 39 N. W. 2d 183 (1949), quoted with approval from the United States Supreme Court to the effect that "picketing cannot be used to compel an employer to coerce his employees to join a union contrary to existing law".

In *Star v. Cooks, Waiters, et al. Union*, 244 Minn. 558, 70 N. W. 2d 873 (1955), the Court held that in determining

whether peaceful picketing ought to be enjoined one of the substantial elements to be considered by the trial court is the objective sought by the picketing.

It was not the intention or purpose of the Minnesota Anti-Injunction Act to restrict the Courts from enjoining unlawful acts or acts, the objectives of which were contrary to the declared public policy of the State and therefore unlawful. In this connection, the case of 260 Madison Avenue Corp. v. Nelson, *supra*, is likewise applicable.

STATEMENT OF MR. HEANEY

Mr. Heaney: The Marine Engineers Beneficial Association is prepared to stipulate that it represents the licensed engineers on approximately 90% of all of the merchant vessels in the United States fleet and that it represents the licensed engineers on approximately 40 to 45% of the merchant fleet on the Great Lakes. It is further prepared to [fol. 44] stipulate that the purpose of picketing the defendant in this case—excuse me, the plaintiff in this case—was to improve the wages, hours and working conditions of the licensed engineers of the plaintiff company as well as the wages, hours and working conditions of the licensed engineers of other companies on the Great Lakes and on the high seas; and that, more specifically, its purpose was to secure—well strike that. And that in furtherance of this policy that its purpose was to obtain from the defendant the type of agreement or understanding that it has obtained from other companies on the Great Lakes under similar circumstances; the type of understanding that has been obtained elsewhere, and that the defendant Marine Engineers Beneficial Association would feel appropriate in this case and would feel would serve the purpose of improving the wages, hours and working conditions of the engineers which is, number 1: That representatives of the Marine Engineers Beneficial Association be given permission to go aboard the vessels of the defendant—of the plaintiff, rather, excuse me—at such reasonable times and places as may be agreed to between the parties, and secondly: to secure an understanding from the company that on request from the Marine Engineers Beneficial Association, within such rea-

sonable time as may be established by the parties and on such a showing as may be agreed to by the parties, that the plaintiff would agree that an election could be held among [fol. 45] the licensed engineers of the company for the purpose of determining whether or not the employees voluntarily and freely, of their own will, in a secret ballot desire to be represented by this association with the understanding being, of course, that if such an election is held and if the employees indicate that they do not desire to be represented by the Marine Engineers Beneficial Association that no further efforts would be made in this action for such reasonable period of time as might be agreed to between the parties.

We also wish to state that it is the feeling of the Marine Engineers Beneficial Association that such election should be conducted by an impartial body such as the American Arbitration Association, and that the ballot be a secret ballot.

I believe, your Honor, that we are willing to stipulate that the National Labor Relations Board would not accept jurisdiction insofar as we seek to represent supervisory employees, and most of the engineers are supervisory employees. By making this statement, I reserve, without going into detail on their arguments of yesterday as to whether or not the National Labor Relations Board may have jurisdiction for purposes of determining whether or not an unfair labor practice has been committed by this group, because it is our position that the National Labor Relations Board has held that we are a labor organization, but we agree that insofar as we seek to represent supervisory employees that the Board will not conduct an elec- [fol. 46] tion, and it is our feeling that those few employees who are still not members of an association or organization or union, or whatever you characterize it as, should have the opportunity to belong to such a group.

I also want to state that the purpose of the picketing was not in any way to compel or, either by economic pressure or any other kind of pressure, the employees either of the particular boat that has been picketed or any other boat of the company to become members of this union, nor was the purpose in any way to get the company to sign an agree-

ment with us recognizing us as the bargaining agent of the Marine Engineers, unless the Marine Engineers voluntarily agreed that they desired that this be done, and that our only purpose was as outlined in the forepart of this statement.

IN DISTRICT COURT OF ST. LOUIS COUNTY

WRIT OF INJUNCTION—December 2, 1959

Whereas, the above named plaintiffs Interlake Steamship Company, a corporation, and Pickands Mather & Co., a copartnership, have served and filed in the District Court of St. Louis County, a complaint praying, among other things, that you, Marine Engineers Beneficial Association, [fol. 47] Charles Laporte, Fred L. Beatty, John Doe and Richard Roe, and all persons acting under you, be enjoined during the pendency of the above entitled action from doing the acts hereinafter in this Writ prohibited, and whereas, it appears to the satisfaction of the above named Court from the said complaint and proofs duly submitted in support thereof, that sufficient grounds exist therefor; and whereas, said plaintiffs have given the necessary and proper undertaking in lieu of bond duly approved by said Court.

Now, therefore, in consideration of the premises and pursuant to the Order of the above named Court, you, Marine Engineers Beneficial Association, Charles Laporte, Fred L. Beatty, John Doe and Richard Roe, and each of you, and all persons acting in aid of or in conjunction or in concert with you, are strictly commanded that you and all persons acting in aid of or in conjunction or in concert with you, do absolutely refrain and desist, until final judgment in the above entitled action, or until further Order of the Court, from:

1. Picketing in any manner, peaceful or otherwise, at or in the vicinity of any of plaintiffs' vessels in the Duluth harbor, including the vessel Samuel Mather, and the dock operated by Carnegie Dock & Fuel Company at 600 Garfield Avenue, Duluth, Minnesota, and

any other dock or similar company at or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading.

[fol. 48] 2. Interfering in any way with any of plaintiffs' employees in connection with ingress or egress to or from any of plaintiffs' vessels in the Duluth harbor including the vessel Samuel Mather.

3. Interfering in any way with the performance of services by the employees of Carnegie Dock & Fuel Company, and any other dock or similar company at or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading.

4. Loitering, grouping or congregating at or near any of plaintiffs' vessels in the Duluth harbor including the vessel Samuel Mather, or at or in the vicinity of the dock operated by Carnegie Dock & Fuel Company, and any other dock or similar company at or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading, or at or near any entrances or exists to or from any of said docks.

5. Creating any disorder in, at or near any of plaintiffs' vessels in the Duluth harbor, including the vessel Samuel Mather, and from threatening, coercing, intimidating, molesting or interfering with any of plaintiffs' officers, agents, and employees and others having business with plaintiffs at or on any of its vessels in said harbor, including the vessel Samuel Mather.

[fol. 49] 6. Committing any acts of force, violence, intimidation or coercion in, at or near any of plaintiffs' vessels in the Duluth harbor, including the vessel Samuel Mather, or at any place against any of plaintiffs' officers, agents, representatives and employees.

7. Ordering, inducing, intimidating, coercing, or attempting to order, induce, intimidate or coerce any of plaintiffs' employees with the intent or effect of causing them to fail or refuse to perform any services for plaintiffs.

8. Ordering, inducing, intimidating, coercing or attempting to order, induce, intimidate or coerce any person, firm or corporation or the employees of any person, firm or corporation or any other labor organization or the members of any other labor organization with the intent or effect of causing them to fail or refuse to perform any services in connection with the loading or unloading of any of plaintiffs' vessels.
9. Conspiring or continuing to conspire or act in concert in combination with each other or with any other individual, person, labor organization, firm or corporation whatsoever to carry on, perform, or do any of the actions hereinbefore in this Order prohibited.
10. Advising, protecting, aiding, assisting or abetting any person or persons in the commission of any [fol. 50] of the acts hereinbefore prohibited.

and this injunction you will observe under penalty of the law.

Witness, the Honorable Mark Nolan, Judge of the District Court aforesaid, and the seal of said Court hereto affixed at Duluth, Minnesota, the 2nd day of December, 1959.

Fred Ash, Clerk of the District Court.

(Seal)

[fol. 56]

IN DISTRICT COURT OF ST. LOUIS COUNTY

**ORDER AMENDING FINDINGS OF FACT AND TEMPORARY
INJUNCTION—March 16, 1960**

On December 1, 1959 this Court issued Findings of Fact, Conclusions of Law and Order for Temporary Injunction and pursuant to the Order for Temporary Injunction the Clerk of this Court on December 2, 1959 issued a Writ of Injunction.

Defendants thereafter moved the Court to amend said Findings of Fact and Conclusions of Law, and this motion came on for hearing before the Court on December 18, 1959 with Lewis, Hammer, Heaney, Weyl & Halverson, by William D. Watters appearing for defendants in support of said motion and Baker, Hostetler & Patterson, by Charles D. Johnson and Nye, Montague, Sullivan & McMillan by Edward T. Fride appearing for plaintiffs in opposition thereto. The Court having considered the arguments of counsel, the briefs of the parties and all of the files and proceedings herein and being fully advised in the premises,

It is ordered that said Findings of Fact, Conclusions of Law and Order for Temporary Injunction issued December 1, 1959 be amended to provide as follows and that the motion of defendants be and hereby is denied in all other respects:

[fol. 57]

IN DISTRICT COURT OF ST. LOUIS COUNTY

FINDINGS OF FACT—March 16, 1960

1. Plaintiff Interlake Steamship Company, a Delaware corporation (hereinafter referred to as "Interlake"), and plaintiff Pickands Mather & Co., a copartnership having its principal office and place of business at Cleveland, Ohio, are respectively the owner and operating agent of a fleet of Great Lakes bulk cargo vessels which transports coal, iron ore and other materials between numerous Great Lakes ports in the United States and Canada, including Duluth, Minnesota.

2. Defendant Marine Engineers Beneficial Association Local 101, (hereinafter referred to as "MEBA") is a voluntary unincorporated association which admits to membership licensed marine engineers employed on commercial vessels on the Great Lakes.

3. Defendant Charles LaPorte is an agent and business representative of defendant MEBA Local 101, and

his duties include the direction of said defendant's activities in Duluth, Minnesota.

4. On November 11, 1959, the Interlake vessel Samuel Mather arrived at the dock of the Carnegie Dock & Fuel Company at Duluth, Minnesota, with a cargo of coal to be unloaded at said dock. The unloading of the vessel by the employees of the Carnegie Dock & Fuel Company, which would ordinarily require about 14 hours, commenced shortly after its arrival.

[fol. 58] 5. At approximately 6:30 a.m. November 12, 1959, five or six individuals commenced picketing the single private road entrance to the dock and walked back and forth across that road. Two of these individuals carried signs which read:

"Pickets Mather Unfair to Organized Labor. This Dispute Only Involves P-M. M.E.B.A. Loc. 101 AFL-CIO."

Two of these individuals carried signs which read:

"M.E.B.A. Loc. 101. AFL-CIO. Request P-M Engineers to Join with Organized Labor to Better Working Conditions. This Dispute Only Involves P-M."

6. From the time of the commencement of this picketing, the employees of the Carnegie Dock & Fuel Company, although having entered the premises of their employer despite such picketing and having performed other duties of their employment, have failed and refused to perform any services whatsoever in connection with the unloading of the Samuel Mather although ordered to do so on numerous occasions.

7. As a further result of such picketing, certain independent truck drivers failed and refused to enter the dock premises to take delivery of coal from the dock company and left their vehicles parked on the single road entrance to the dock for approximately two hours on the morning of November 12, 1959. Said drivers thereafter [fol. 59] went through the picket line and took delivery of coal from the dock.

8. Defendant Charles LaPorte stated at or near the picket line on the morning of November 12, 1959, that it was the intention of MEBA Local 101 to picket Interlake vessels wherever it could locate them in the Duluth Minnesota harbor.

9. The picketing at the dock company premises continued until the service of the temporary restraining order issued by this Court in the afternoon of November 12, 1959. Despite the absence of formal picketing at the dock company's premises since that time, the dock company employees have continued to refuse to unload the Samuel Mather.

10. The Carnegie Dock & Fuel Company dock at Duluth Minnesota, has facilities for the unloading of only one vessel at a time. The Interlake vessel Piekands, also loaded with coal for the same dock, arrived at Duluth, Minnesota, the morning of November 15, 1959, and has been anchored outside the harbor ever since that date pending the unloading of the Samuel Mather.

11. At approximately 10:55 p.m., November 12, 1959, four or five individuals appeared at the entrance to the Duluth Minnesota plant of Interlake Iron Corporation and walked across the entrance in a circle carrying signs bearing [fol. 60] the legends set forth in paragraph 5 hereof. At that time, the Interlake vessel Mills was unloading a cargo of coal for use at the Interlake Iron plant at the plant dock approximately 3,000 feet from the place of such picketing. The picketing at the entrance to the Interlake Iron Corporation plant ceased approximately one hour later upon the service of the temporary restraining order upon the pickets. None of the employees of Interlake Iron Corporation ceased performing any services during such temporary picketing.

12. Prior to the commencement of the picketing as described above on November 12, 1959, there had been no contact whatsoever between plaintiffs and defendants, nor had defendant MEBA Local 101, or anyone acting for or on its behalf, made any demand or request whatsoever, either written or oral, of plaintiffs or either of them. Plain-

tiffs have a uniform policy applicable to all their vessels which prohibits all persons other than employees, their wives, authorized inspectors and suppliers from coming onto any of its vessels at any time for any purpose.

13. All engineers and assistant engineers employed on Interlake vessels stand watches during which they are in charge of and responsible for the operation and condition of the vessel's propulsion mechanism and responsibly direct, control and supervise the work of the firemen, oilers and coal passers on duty during such watch; they hire, fire, transfer and change the status of and discipline the [fol. 61] persons working under them and have authority to and do make effective recommendations respecting the employment and tenure of employment of the people working under them; they handle initially grievances of the employees who are subject to their supervision; the exercise of authority by the engineers and assistant engineers requires the use of independent judgment and discretion; and all such engineers are required to be licensed by the United States Coast Guard.

14. The acts of the defendants specified herein have caused and are causing serious economic and monetary loss and irreparable damage to the plaintiffs by preventing the unloading and subsequent loading of the Steamers Mather and Pickands at a loss of \$6,000 a day exclusive of profit and if defendants' threats to picket all Interlake vessels coming into the Duluth harbor were carried out, such would result in interference with the majority of plaintiffs' vessels.

15. The further purpose and objective of the picketing and activities of MEBA Local 101, hereinabove described is to secure from plaintiffs the same type of agreement or understanding which it has obtained from other employers operating bulk cargo vessels on the Great Lakes. Every agreement or understanding between said defendant and other Great Lakes vessel companies includes a [fol. 62] provision requiring every licensed engineer hired after a specified date to become a member of said defendant organization within thirty days from the date of his employment as a condition of continued employment.

16. The further purpose and objective of defendants' picketing and activities as described above was to coerce and induce plaintiffs to force, compel or induce engineers employed on Interlake vessels to become members of MEBA Local 101 and was for the purpose of injuring plaintiffs in their business because of their refusal to in any way interfere with the rights of engineers employed on Interlake vessels to join or not to join said defendant organization.

17. The further purpose and objective of defendants' picketing and activities as described above was to coerce and intimidate plaintiffs in order to secure recognition from plaintiffs of MEBA Local 101 as the collective bargaining agent for the licensed engineers employed on Interlake vessels.

18. MEBA and MEBA Local 101 have consistently contended and taken the position in all proceedings involving them, or either of them, before the Federal Courts and before the National Labor Relations Board that neither such Courts nor the Board have any jurisdiction over them because they are not "labor organizations" within the meaning of the National Labor Relations Act, as amended.

[fol. 63] 19. There is no claim that defendant Marine Engineers Beneficial Association and defendant Local 101 represent a majority of the licensed engineers employed by plaintiffs, nor are such organizations the authorized collective bargaining representative of said engineers.

20. The activities of defendants above described constitute compulsion to plaintiffs to commit an unfair labor practice within the meaning of Minnesota Statutes 179.12 and constitute a violation of Minnesota Statutes 179.12 (3).

21. The activities of the defendants above described do not constitute a violation of Minnesota Statutes 179.11.

22. The activities of defendants did not include the use of violence or threats of violence.

23. The policy of the State of Minnesota protects the freedom of employees to decline to associate with his fel-

lows and assures freedom of association, self-organization and designation of representatives of his own choosing free from the interference, restraint or coercion of employers.

24. The activities of defendants above described are in violation of the public policy of Minnesota as declared by the statutes and the Supreme Court.

[fol. 64]

IN DISTRICT COURT OF ST. LOUIS COUNTY

CONCLUSIONS OF LAW—March 16, 1960

1. This case does not involve any "labor organization" within the meaning of the National Labor Relations Act, as amended.

2. All of the engineers and assistant engineers employed on all Interlake vessels are "supervisors" within the meaning of that term as defined in the National Labor Relations Act, as amended.

3. This Court has jurisdiction of this action since no "labor organization" subject to the jurisdiction of the National Labor Relations Board is involved in this case and since organizational activities of an organization attempting to secure collective bargaining rights for, supervisory employees are excluded from the jurisdiction of the National Labor Relations Board and do not constitute protected activities under the National Labor Relations Act, as amended.

4. In attempting to require plaintiffs to recognize MEBA Local 101 as the collective bargaining agent for certain of plaintiffs' supervisory employees, defendants are seeking an unlawful objective contrary to the State and Federal policies as declared by the Minnesota Legislature and Minnesota Courts and as declared by Congress in Section 14 (a) of the National Labor Relations Act, as amended.

[fol. 65] 5. The provisions of the Minnesota Labor Relations Act (Minn. Stats. Sections 179.01 et seq.), except for the provisions of Sec. 179.16, apply to the defendants in

as such as supervisors are not excluded from the definition of the term "employee" contained in said Act and organizations of supervisors are not excluded from the definition of the term "labor organization" contained in said Act.

6. The picketing and other acts of the defendants as described herein for the purposes stated herein are intended to require or compel the plaintiffs to commit an unfair labor practice within the meaning of Minn. Stats. Sec. 179.12, Subd. 3, particularly in the light of the public policy of the State of Minnesota as declared in Minn. Stats. Sections 179.10 and 185.08, and therefore represent unlawful acts.

7. The acts of the defendants in seeking to require plaintiffs to compel, coerce, or require licensed engineers employed on Interlake vessels to become members of MEBA Local 101 irrespective of their wishes, represent violations of the public policy of the State of Minnesota as declared in Minn. Stats. Sec. 185.08, and therefore represent an unlawful objective.

8. Plaintiffs are threatened with irreparable injury and damage by defendants' picketing and other activities and plaintiffs have no adequate remedy at law.

[fol. 66] 9. The Minnesota Anti-Injunction Act does not apply to this proceeding and does not prevent the issuance of a temporary injunction against the activities of the defendants in seeking unlawful objectives in violation of the expressly declared policy of both State and Federal Statutes, especially the policy of the State of Minnesota as declared in Sec. 185.08 of the Anti-Injunction Act; Minnesota Statute 179.14 specifically excepts the Anti-Injunction Act from applicability where a violation of 179.12 is found; in any event the record in this proceeding discloses the existence, or the inapplicability, of each condition to the granting of injunctive relief specified in Minn. Stats. Sec. 185.13.

IN DISTRICT COURT OF ST. LOUIS COUNTY

ORDER FOR TEMPORARY INJUNCTION—March 16, 1960

It is ordered, that the bond heretofore filed by plaintiffs continue in effect and that the Writ of Injunction heretofore issued under date of December 2, 1959 remain in full force and effect except as modified by the following Order and that the Clerk is authorized to issue a temporary injunction commanding defendants, and each of them, and all persons acting in aid or in conjunction or in concert with them, to refrain from:

1. Picketing in any manner, peaceful or otherwise, at or in the vicinity of any of plaintiffs' vessels in the Duluth harbor, including the vessel Samuel Mather, and the dock operated by Carnegie Dock & Fuel Company at 600 Garfield Avenue, Duluth, Minnesota, and any other dock or similar company at or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading.
2. Interfering in any way with any of plaintiffs' employees in connection with ingress or egress to or from any of plaintiffs' vessels in the Duluth harbor including the vessel Samuel Mather.
3. Interfering in any way with the performance of services by the employees of Carnegie Dock & Fuel Company, and any other dock or similar company at or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading.
4. Loitering, grouping or congregating at or near any of plaintiffs' vessels in the Duluth harbor including the vessel Samuel Mather, or at or in the vicinity of the dock operated by Carnegie Dock & Fuel Company, and any other dock or similar company at or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading, or at or near any entrances or exits to or from any of said docks.
5. Threatening, coercing, intimidating, molesting or interfering with any of plaintiffs' officers, agents, and

employees and others having business with plaintiffs [fol. 68] at or on any of its vessels in said harbor, including the vessel Samuel Mather.

6. Ordering, inducing, intimidating, coercing or attempting to order, induce, intimidate or coerce any person, firm or corporation or the employees of any person, firm or corporation or any other labor organization or the members of any other labor organization with the intent or effect of causing them to fail or refuse to perform any services in connection with the loading or unloading of any of plaintiffs' vessels.

7. Conspiring or continuing to conspire or act in concert in combination with each other or with any other individual, person, labor organization, firm or corporation whatsoever to carry on, perform, or do any of the actions hereinbefore in this order prohibited.

8. Advising, protecting, aiding, assisting or abetting any person or persons in the commission of any of the acts hereinbefore prohibited.

until final judgment herein or until further order of the Court.

Dated this 16th day of March, 1960.

By the Court: Mark Nolan, Judge.

[fol. 69]

IN DISTRICT COURT OF ST. LOUIS COUNTY

MEMORANDUM—March 16, 1960

This Court attached a Memorandum to its Order of December 1, 1959 and it is felt that this Memorandum states the legal basis upon which said Order was issued and the same is adopted here by reference. Following the hearing on defendants' motion to amend the Findings, the Court has made some changes in the Findings of Fact and the terminology of the injunction but has not altered the basis for granting the temporary injunction in the first instance and there is no intention to change its substance.

At the time the Findings of Fact and the remainder of the order was prepared, the attorneys for the plaintiffs were instructed to draw the order and were told specifically by the Court what to put into the order. The reason for this, of course, was because at that time I, as Judge, was sandwiched between the special term of Court at Duluth and the opening of the jury term at Virginia. Because of the statutory provisions, all these questions had to be determined and settled very quickly. Consequently, this resulted in some inaccuracies in the statement of facts. I believe that these have been corrected in the amended order.

This Court regrets that on both occasions when the temporary restraining order, the temporary injunction and the motion for amended findings were made, that this Court, [fol. 70] because of the pressure of other duties, was not permitted at any time to give the complete attention to this case which it deserved. This does not mean that my Findings of Fact and Conclusions of Law and injunctive relief, as finally determined, were arrived at without profound and deep consideration, but it does suggest that in matters as weighty as these that it is regrettable that the Court is not able to push aside all other business and concentrate on the matters at hand.

IN DISTRICT COURT OF ST. LOUIS COUNTY

WRIT OF INJUNCTION—March 16, 1960

Whereas, a Writ of Injunction was issued on December 2, 1959 pursuant to the Court's Order of December 1, 1959, and whereas, the Court has now issued an Order amending Findings of Fact, Conclusions of Law and Order for Temporary Injunction on the 16th day of March, 1960, and whereas, plaintiffs have given the necessary and proper undertaking in lieu of bond duly approved by said Court,

Now, therefore, in consideration of the premises and pursuant to the Order of the above named Court, you, Marine Engineers Beneficial Association, Charles LaPorte, Fred L. Beatty, John Doe and Richard Roe, and each of you, and all persons acting in aid of or in conjunction or in

concert with you, are strictly commanded that you and all [fol. 71] persons acting in aid of or in conjunction or in concert with you, do absolutely refrain and desist, until final judgment in the above entitled action, or until further Order of the Court, from:

1. Picketing in any manner, peaceful or otherwise, at or in the vicinity of any of plaintiffs' vessels in the Duluth harbor, including the vessel Samuel Mather, and the dock operated by Carnegie Dock & Fuel Company at 600 Garfield Avenue, Duluth, Minnesota and any other dock or similar company at or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading.
2. Interfering in any way with any of plaintiffs' employees in connection with ingress or egress to or from any of plaintiffs' vessels in the Duluth harbor including the vessel Samuel Mather.
3. Interfering in any way with the performance of services by the employees of Carnegie Dock & Fuel Company, and any other dock or similar company at or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading.
4. Loitering, grouping or congregating at or near any of plaintiffs' vessels in the Duluth harbor including the vessel Samuel Mather, or at or in the vicinity of [fol. 72] the dock operated by Carnegie Dock & Fuel Company, and any other dock or similar company at or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading, or at or near any entrances or exits to or from any of said docks.
5. Threatening, coercing, intimidating, molesting or interfering with any of plaintiffs' officers, agents, and employees and others having business with plaintiffs at or on any of its vessels in said harbor, including the vessel Samuel Mather.
6. Ordering, inducing, intimidating, coercing or attempting to order, induce, intimidate or coerce any person, firm or corporation or the employees of any

person, firm or corporation or any other labor organization or the members of any other labor organization with the intent or effect of causing them to fail or refuse to perform any services in connection with the loading or unloading of any of plaintiffs' vessels.

7. Conspiring or continuing to conspire or act in concert in combination with each other or with any other individual, person, labor organization, firm or corporation whatsoever to carry on, perform, or do any of the actions hereinbefore in this Order prohibited.

[fol. 73] 8. Advising, protecting, aiding, assisting or abetting any person or persons in the commission of any of the acts hereinbefore prohibited.

and this Injunction you will observe under penalty of the law.

Witness, the Honorable Mark Nolan, Judge of the District Court aforesaid, and the seal of said Court hereto affixed at Duluth, Minnesota, the 16th day of March, 1960.

Fred Ash, Clerk of the District Court.

(Seal)

IN DISTRICT COURT OF ST. LOUIS COUNTY

STIPULATION AS TO RECORD

It is hereby stipulated and agreed, by and between the above named parties, through their respective attorneys, that the above entitled matter is hereby submitted to the Court on the basis of the present record, files and proceedings herein without any further testimony or hearings, for the purpose of the Court making a final order for judgment.

[fol. 74] Dated at Duluth, Minnesota, this 28th day of March, 1960.

Baker, Hostetler & Patterson, Union Commerce Building, Cleveland 14, Ohio; Nye, Montague, Sullivan & McMillan, By E. T. Fride, 1200 Alworth Building, Duluth 2, Minnesota, Attorneys for Plaintiffs.

Lee Pressman, 50 Broadway, New York, N.Y.;
Lewis, Hammer, Heaney, Weyl & Halverson, By
Gerald W. Heaney, 700 Providence Building,
Duluth 2, Minnesota, Attorneys for Defendants.

IN DISTRICT COURT OF ST. LOUIS COUNTY

ORDER ON STIPULATION RE INJUNCTION—March 28, 1960

Based on the above Stipulation and on all of the records, files and proceedings herein, it is hereby ordered that the Writ of Temporary Injunction heretofore issued by the Clerk of this Court on March 16, 1960 is hereby made a Writ of Permanent Injunction and the Clerk is instructed [fol. 75] to issue a Writ of Permanent Injunction in the same terms as those contained in the Writ of Temporary Injunction issued on March 16, 1960. The Court adopts by reference all of the amended Findings of Fact and Conclusions of Law issued by Order dated March 16, 1960, the Memorandum attached to said Order of March 16, 1960 and the Memorandum attached to the Court's Order of December 1, 1959 as fully as if said Order and Memorandums were expressly set forth hereafter.

It is further ordered that the bond heretofore filed by plaintiffs continue in effect during such period as the Permanent Injunction is in effect.

Dated this 28th day of March, 1960.

By the Court: Mark Nolan, Judge.

IN DISTRICT COURT OF ST. LOUIS COUNTY

WRIT OF PERMANENT INJUNCTION—March 28, 1960

The State of Minnesota, to the above named defendants
Marine Engineers Beneficial Association, Charles La-
Porte, Fred L. Beatty, John Doe and Richard Roe:

Whereas, a Writ of Temporary Injunction was issued by the undersigned on March 16, 1960, and whereas, the Court

[fol. 76] has now issued an Order on the 28th day of March, 1960 directing the undersigned to issue a Writ of Permanent Injunction.

Now, therefore, in consideration of the premises and pursuant to the Order of the above named Court you, Marine Engineers Beneficial Association, Charles LaPorte, Fred L. Beatty, John Doe and Richard Roe, and each of you, and all persons acting in aid of or in conjunction or in concert with you, are strictly commanded that you and all persons acting in aid of or in conjunction or in concert with you, absolutely refrain and desist perpetually from:

1. Picketing in any manner, peaceful or otherwise, at or in the vicinity of any of plaintiffs' vessels in the Duluth harbor, including the vessel Samuel Mather, and the dock operated by Carnegie Dock & Fuel Company at 600 Garfield Avenue, Duluth, Minnesota, and any other dock or similar company at or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading.
2. Interfering in any way with any of plaintiffs' employees in connection with ingress or egress to or from any of plaintiffs' vessels in the Duluth harbor including the vessel Samuel Mather.
3. Interfering in any way with the performance of services by the employees of Carnegie Dock & Fuel Company, and any other dock or similar company at [fol. 77] or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading.
4. Loitering, grouping or congregating at or near any of plaintiffs' vessels in the Duluth harbor including the vessel Samuel Mather, or at or in the vicinity of the dock operated by Carnegie Dock & Fuel Company, and any other dock or similar company at or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading, or at or near any entrances or exits to or from any of said docks.

5. Threatening, coercing, intimidating, molesting or interfering with any of plaintiffs' officers, agents, and employees and others having business with plaintiffs at or on any of its vessels in said harbor, including the vessel **Samuel Mather**.

6. Ordering, inducing, intimidating, coercing or attempting to order, induce, intimidate or coerce any person, firm or corporation or the employees of any person, firm or corporation or any other labor organization or the members of any other labor organization with the intent or effect of causing them to fail or refuse to perform any services in connection with the loading or unloading of any of plaintiffs' vessels.

[fol. 78] 7. Conspiring or continuing to conspire or act in concert in combination with each other or with any other individual, person, labor organization, firm or corporation whatsoever to carry on, perform, or do any of the actions hereinbefore in this Order prohibited.

8. Advising, protecting, aiding, assisting or abetting any person or persons in the commission of any of the acts hereinbefore prohibited.

and this Injunction you will observe under penalty of the law.

Witness, the Honorable Mark Nolan, Judge of the District Court aforesaid, and the seal of said Court hereto affixed at Duluth, Minnesota, the 28th day of March, 1960.

Fred Ash, Clerk of the District Court.

[fol. 79]

IN DISTRICT COURT OF ST. LOUIS COUNTY

AFFIDAVIT OF HERBERT L. DAGGETT

Mr. Fride: "State of New York, County of New York, Herbert L. Daggett, being duly sworn, deposes and says, paragraph 1: I am the president of the National Marine Engineers Beneficial Association, AFL-CIO, hereinafter re-

ferred to as the MEBA, one of the defendants herein, and make this affidavit in opposition to the motion of the plaintiff for a temporary injunction, and in support of MEBA's cross motion to dismiss the complaint. Paragraph 2: As president, I am the chief executive officer of the MEBA. I have occupied such office since 1949, as a result of successive elections by the entire national membership of MEBA. Prior to 1949, I was, for several years, the business manager of subordinate association No. 38 of MEBA, one of the locals of MEBA, with jurisdiction in Seattle, Washington. Paragraph 3: The MEBA is a national labor union, composed of many subordinate associations, whose members are licensed marine engineers."

I am skipping now to paragraph 10 in the same affidavit. "Paragraph 10: As former business manager of the sub-[fol. 80] ordinate association No. 38 of MEBA in Seattle, and as president of the MEBA, I am fully acquainted with the type of membership within the MEBA. Further, I hold a license as a chief marine engineer. Prior to my becoming an official of the local and the national organization, I sailed under my license for many years. As such, I am fully acquainted with the type of work performed by marine engineers who fall within the jurisdiction of the MEBA. I can state most categorically that licensed marine engineers who comprise the entire members of MEBA, without a single exception in the nature of their work, have authority in the interests of the employer for whom they may be working to hire, transfer, suspend, lay off, recall, promote, discharge, fine, reward or discipline the unlicensed personnel who work in the engine department, over which the licensed engineers have supervision or responsibility to direct such unlicensed personnel in the engine department or adjust the grievances of the unlicensed personnel in the engine department, or to effectively recommend any such action. In furtherance of their duties, licensed engineers do not exercise the authority just described merely as a routine or clerical nature, but they must exercise the use of independent judgment. Every single member of MEBA performs work of the nature which I have just described. The type of marine personnel over whom the MEBA assumes jurisdiction and takes in

as members, is precisely that which I have just described. [fol. 81] We do not have any members who do not fall within such description, insofar as their duties and responsibilities are concerned. It is undoubtedly true with respect to the licensed marine officers employed by the plaintiff that they exercise precisely the duties and responsibilities and the nature of their work is exactly as I have above described them." And that is signed, under oath, by Herbert L. Daggett, October 9, 1957, as the president of the MEBA.

• • • • •

[fol. 82] [File endorsement omitted]

**IN THE SUPREME COURT OF MINNESOTA
ST. LOUIS COUNTY**

No. 9

38110

**INTERLAKE STEAMSHIP COMPANY and
PICKANDS-MATHER & COMPANY, Respondents,**

vs.

**MARINE ENGINEERS BENEFICIAL ASSOCIATION, et al.,
Appellants.**

SYLLABUS

1. Exclusion of supervisory employees from Federal Labor Management Relations Act of 1947 left field open for state regulation, and state courts have jurisdiction, under proper facts, to enjoin labor organization from committing an act unlawful under state labor law.
2. In determining purpose of picketing in a labor case, a trial court may draw reasonable inferences from evidence the same as in any other field of litigation.

3. Where the purpose of picketing is to coerce or compel an employer to commit an unlawful act, the picketing itself becomes unlawful.

4. Minnesota Anti-Injunction Act, Minn. St. c. 185, does not prohibit the issuance of an injunction to restrain the commission of an unlawful act.

Affirmed.

OPINION—March 30, 1961

KNUTSON, Justice.

This is an appeal from an order of the district court granting a permanent injunction restraining defendants from picketing under the facts of this case.

[fol. 83] Plaintiffs, Interlake Steamship Company and Pickands-Mather & Company, are the owners and operators of the second largest bulk cargo fleet of ships on the Great Lakes. For the most part, its ships transport bulk cargoes of coal and iron ore between Great Lakes ports in the United States and Canada.

Defendant Marine Engineers Beneficial Association, Local 101, referred to hereinafter as MEBA, is a voluntary unincorporated association which admits to membership licensed engineers employed on commercial vessels on the Great Lakes and the oceans.

Defendant Charles LaPorte is an agent and business representative of MEBA. His duties include the direction of the activities of MEBA in Duluth, Minnesota.

On November 11, 1959, Interlake's vessel, *Samuel Mather*, arrived at the dock of the Carnegie Dock & Fuel Company at Duluth, Minnesota, to unload a cargo of coal. The unloading of the vessel by the employees of Carnegie Dock & Fuel Company commenced shortly after the ship had docked. In the normal course of events the ship would have been unloaded in about 34 hours.

Early in the morning of November 12, 1959, five or six men began picketing the single private road entrance to the dock, walking in a tight circle across the road. Some of the men carried signs which read:

"Pickands-Mather Unfair To Organized Labor
This Dispute Only Involves Pickands-Mather M.E.B.A.
Loc. 101 A.F.L.-C.I.O."

Others carried signs which read:

"M.E.B.A. Loc. 101 AFL-CIO Requests
P. M. Engineers To Join with Organized Labor
to Better Working Conditions
This Dispute Only Involves Pickands-Mather"

[fol. 84] After the picketing of this road began, dockworkers employed by Carnegie Dock & Fuel Company refused to proceed with the unloading of the vessel. Later the same day, the District Court of St. Louis County issued a temporary restraining order prohibiting such picketing, but the dockworkers still refused to unload the cargo. As a further result of the picketing, certain independent truckdrivers refused to enter the premises and take delivery of coal for 2 hours.

Defendant Charles LaPorte, who identified himself on November 12, 1959, as business agent of MEBA, Local 101, stated that it was the intention of the union to picket all Pickands-Mather ships coming into the harbor.

On November 15, 1959, while the *Samuel Mather* remained partially unloaded at the dock, Interlake's vessel, *Pickands*, arrived in the Duluth harbor with another load of coal destined for unloading at the same dock. Since the dock could handle only one ship at a time, the *Pickands* had to remain anchored in the harbor for a number of days.

On the night of November 12, 1959, four or five pickets with signs identifying them with MEBA appeared at the entrance to the Duluth plant of the Interlake Iron Corporation and moved around continuously across the plant entrance. At that time there was no dispute between Interlake Iron Corporation and its employees, and none of its employees were on the picket line.

Each Interlake vessel has a chief engineer and three assistant engineers, all of whom are licensed by the coast guard. Plaintiffs' evidence sought to show that all Interlake engineers and assistant engineers are supervisory

employees. Defendants introduced no evidence on this point but admitted that all of the engineers and assistant engineers aboard the *Mather* were supervisors.

Plaintiffs had no dispute of any kind with the employees on the Interlake fleet at the time of the picketing, and prior [fol. 85] to the picketing there had never been any negotiations between plaintiffs and defendants nor had defendants ever made any request of the plaintiffs for leave to board its ships. Interlake had an established policy to prohibit any unauthorized person from boarding its ships. Request had never been made of any Interlake official for permission to board such ships, but the right to do so was refused by the person who was on watch at the ship at the time in accordance with the rules of Interlake forbidding any unauthorized person to go aboard.

Plaintiffs' representatives and Interlake's chief executive officers knew of no MEBA members in the fleet. Defendants claim that it did have some such engineers as members but refused to disclose the names thereof. The trial court found that all of the engineers and assistant engineers employed on plaintiffs' vessels are supervisors within the meaning of the National Labor Relations Act.

Picketing which prevented the unloading of the vessels caused financial loss to plaintiffs amounting to about \$6,000 per day, not including any profit.

A hearing was held on November 18, 1959, after which a temporary injunction was granted, and a permanent injunction was subsequently ordered on March 28, 1960.

It is the contention of defendants (1) that the state court lacks jurisdiction over the subject matter of the action; and (2) that if the state court does have jurisdiction the injunction should nevertheless have been denied.

1. Defendants first contend that the state court lacks jurisdiction to enjoin picketing for organizational or recognition purposes but that such jurisdiction rests exclusively with the National Labor Relations Board. To support this contention, they rely on *Norris Grain Co. v. Seafarers' International Union*, 232 Minn. 91, 46 N. W. (2d) 94, and *Faribault Daily News, Inc. v. International Typog. Union*,

236 Minn. 303, 53 N. W. (2d) 36; Annotation, 32 A. L. R. (2d) 1026.

[fol. 86] Under the original Federal Labor Management Relations Act of 1935 the contention of defendants no doubt would be sound. Packard Motor Car Co. v. National Labor Relations Board, 330 U. S. 485, 67 S. Ct. 789, 91 L. ed. 1040. The Federal act, however, was amended in 1947 by the so-called Taft-Hartley Act, and the amendments brought about at that time are of great importance in this case. As so amended, the law is found in 29 USCA, § 152(3), 61 Stat. 137, and, as far as pertinent here, reads:

"The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, * * * *but shall not include * * * any individual employed as a supervisor, * * **" (Italics supplied.)

29 USCA, § 152(11), 61 Stat. 138, reads:

"The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

29 USCA, § 164(a), 61 Stat. 151, reads:

"Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this subchapter shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining."

29 USCA, § 157, 61 Stat. 140, defines the right of employees to organize and reads:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158 (a)(3) of this title."

[fol. 87] The trial court found that the engineers employed by plaintiffs were supervisors within the meaning of the above Federal provisions. That finding has ample support in the record and is not, we believe, seriously disputed by defendants.

Defendants argue, however, that it has now been determined in *National Marine Engineers Beneficial Assn. v. National Labor Relations Board* (2 Cir.) 274 F. (2d) 167, that MEBA is a labor organization subject to the secondary boycott provisions of the Federal act and that, inasmuch as the complaint in this case alleges a violation of the secondary boycott provisions of both state and Federal laws, it follows that the National Labor Relations Board has exclusive jurisdiction under our decision in *Norris Grain Co. v. Seafarers' International Union*, *supra*. This contention is untenable for at least two reasons. In the first place, the Federal court did not hold that MEBA is a labor organization under the evidence in this case. Decision in that case was based squarely on the facts there involved. To make this clear, the court said (274 F. [2d] 175):

" * * * The Board [National Labor Relations Board] could properly have thought that the matters placed in the record by the general counsel justified an inference that non-supervisors do participate in MEBA and MMP, and that this sufficed for the Board's finding to that effect unless they were rebutted by more convincing evidence than the unions offered here. We

therefore cannot say the Board's finding that MEBA and MMP were labor organizations did not meet the standards laid down in *Universal Camera Corp. v. N. L. R. B.*, 1951, 340 U. S. 474, 71 S. Ct. 456, 95 L. Ed. 456. *We are not saying that MEBA and MMP are or are not in fact 'labor organizations' within the meaning of §8(b) today. We say only that we cannot hold, on the evidence in this record, that the Board was unjustified in finding that they were in April, 1957.* We do not look with favor on the practice of determining such an issue by the citation of previous Board proceedings rather than by an investigation of the facts." (Italics supplied.)

[fol. 88] Secondly, *Norris Grain Co. v. Seafarers' International Union, supra*, had nothing to do with supervisory employees who are expressly excluded by the Taft-Hartley amendment to the Federal labor act.

We fully realize that in determining whether a state court has jurisdiction over any phase of labor relations involving interstate commerce we are treading in a no man's land where the boundaries are frequently obscure,¹ but it seems to us that, when Congress expressly excluded supervisory employees from the Federal act and left it clearly up to management to determine whether it would recognize and deal with the union as a bargaining agent for such employees, it left this field open to state regulation.² Any other conclusion would lead to the result that labor practices in this area would be subject to no regulation at all. We are convinced that here the state court had jurisdiction. The same result was reached by the California court in *Safeway Stores, Inc. v. Retail Clerks International Assn.*, 41 Cal. (2d) 567, 261 P. (2d) 721, and *In re Kelleher*, 40 Cal. (2d) 424, 254 P. (2d) 572; and by the New York court in *260 Madison Avenue Corp. v. Nelson*, 284 App. Div. 254, 131 N. Y. S. (2d) 426.

¹ See, *Labor Relations Law, 1959 Annual Survey of American Law*, New York University School of Law, p. 145.

² See, *McLean Distributing Co. Inc. v. Brewery & Beverage Drivers*, 254 Minn. 204, 94 N. W. (2d) 514, certiorari denied, 360 U. S. 917, 79 S. Ct. 1436, 3 L. ed. (2d) 1534.

2. We then come to the more difficult question as to whether plaintiffs were entitled to an injunction under our state law. Crucial to a determination of this question are [fol. 89] the following findings of the court:

"15. The *** purpose and objective of the picketing and activities of MEBA Local 101, hereinabove described is to secure from plaintiffs the same type of agreement or understanding which it has obtained from others employers operating bulk cargo vessels on the Great Lakes. Every agreement or understanding between said defendant and other Great Lakes vessel companies includes a provision requiring every licensed engineer hired after a specified date to become a member of said defendant organization within thirty days from the date of his employment as a condition of continued employment.

"16. The further purpose and objective of defendants' picketing and activities as described above was to coerce and induce plaintiffs to force, compel or induce engineers employed on Interlake vessels to become members of MEBA Local 101 and was for the purpose of injuring plaintiffs in their business because of their refusal to in any way interfere with the rights of engineers employed on Interlake vessels to join or not to join said defendant organization.

"17. The further purpose and objective of defendants' picketing and activities as described above was to coerce and intimidate plaintiffs in order to secure recognition from plaintiffs of MEBA Local 101 as the collective bargaining agent for the licensed engineers employed on Interlake vessels."

It is the contention of defendants that these findings are not supported by the evidence; that the only purpose of picketing was to obtain leave to board plaintiffs' vessels so that agents of MEBA could talk to the engineers and attempt to induce them to become members of the union; and that a further purpose was to procure an election to be conducted by some impartial group to ascertain whether the engineers wished to have MEBA represent them as

collective bargaining agents. It is conceded by all that the National Labor Relations Board would not conduct such election.

The stipulation of defendants' counsel as to the purpose of the picketing is somewhat revealing. He said:

[fol. 90] "The Marine Engineers Beneficial Association is prepared to stipulate * * * that the purpose of picketing * * * the plaintiff in this case—was to improve the wages, hours and working conditions of the licensed engineers of the plaintiff company as well as the wages, hours and working conditions of the licensed engineers of other companies on the Great Lakes and on the high seas; and that, more specifically, its purpose was to secure—well strike that. And that in furtherance of this policy that its purpose was to obtain from the defendant the type of agreement or understanding that it has obtained from other companies on the Great Lakes under similar circumstances; the type of understanding that has been obtained elsewhere, and that the defendant Marine Engineers Beneficial Association would feel appropriate in this case and would feel would serve the purpose of improving the wages, hours and working conditions of the engineers which is, number 1: That representatives of the Marine Engineers Beneficial Association be given permission to go aboard the vessels * * * of the plaintiff * * * at such reasonable times and places as may be agreed to between the parties, and secondly: to secure an understanding from the company that on request from the Marine Engineers Beneficial Association, within such reasonable time as may be established by the parties and on such a showing as may be agreed to by the parties, that the plaintiff would agree that an election could be held among the licensed engineers of the company for the purpose of determining whether or not the employees voluntarily and freely, of their own will, in a secret ballot desire to be represented by this association with the understanding being, of course, that if such an election is held and if the employees indicate that they do not desire to be repre-

sented by the Marine Engineers Beneficial Association that no further efforts would be made in this action for such reasonable period of time as might be agreed to between the parties."

The signs carried by the pickets also are significant in establishing the ultimate objective of the picketing.

The record discloses, without dispute, that the type of contract which MEBA desired to obtain contained a union security clause requiring all engineers at some time in the future to become members of the union.

In determining what the ultimate purpose of the picketing was, the court was justified in drawing reasonable inferences from the evidence. After all, courts need not be oblivious to facts which are apparent to all others. Here, no dispute existed between plaintiffs and their employees. [fol. 91] None of plaintiffs' employees took part in the picketing, but the pickets were entirely agents of MEBA, some of whom came from places far removed from the scene of the activity. It is conceded that MEBA did not represent such employees although it is claimed that a few of the engineers did belong to MEBA. No request had been made of anyone having authority to grant it on behalf of plaintiffs for leave to board its ships or to have an election, which defendants claim was the sole purpose of the picketing. The pickets simply appeared on the scene like ghosts in the night and effectively and immediately tied up the unloading of plaintiffs' ships due to the fact that the employees of Carnegie Dock & Fuel Company refused to work on the ships as long as the pickets remained there. It is apparent that the ultimate object of MEBA was to procure a contract having a union security clause in it which would require engineers in the future to become members of the union. We think that the court had ample justification in finding, as it did, that the purpose of the picketing was to coerce or compel plaintiffs to accept a contract having in it a union security clause.

3. Under the Minnesota Labor Relations Act, supervisors are not excluded as they are under the Federal act, although Minn. St. 179.16 places them in a separate cate-

gory in that they cannot vote in the selection of a bargaining agent.

Section 179.10 contains a declaration of public policy adopted by our legislature with respect to rights of employees. Subd. 1 thereof reads:

“Employees shall have the right of self-organization and the right to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employees shall have the right to refrain from any and all such activities.”

In 1947, our legislature added § 179.42, which reads:

“It is an unlawful act and an unfair labor practice for any person or organization to combine with another, to cause loss or injury to an employer, to refuse to handle or work on particular goods or equipment or perform services for an employer, or to withhold patronage, or to induce, or to attempt to induce, another to withhold patronage or other business intercourse, for the purpose of inducing or coercing such employer to persuade or otherwise encourage or discourage his employees to join or to refrain from joining any labor union or organization or for the purpose of coercing such employer's employees to join or refrain from joining any labor union or organization.”

Section 179.12, as far as here material, reads:

“It shall be an unfair labor practice for an employer:

• • • • • • •

“(3) To encourage or discourage membership in any labor organization by discrimination in regard to hire or tenure of employment or any terms or conditions of employment: provided, that this clause shall not apply to the provisions of collective bargaining agreements entered into voluntarily by an employer and his em-

ployees or a labor organization representing the employees as a bargaining agent, as provided by section 179.16."

Thus, under § 179.12(3), it is an unfair labor practice for employers to enter into agreements containing union security clauses unless such provisions are contained in agreements entered into voluntarily by an employer and his employees or a labor organization representative as a collective bargaining agent as provided by § 179.16.

In *The Dayton Co. v. Carpet, Linoleum, etc., Union*, 229 Minn. 87, 39 N. W. (2d) 183, appeal dismissed, 339 U. S. 906, 70 S. Ct. 570, 94 L. ed. 1334, we held that it was an unlawful practice for an employer to coerce employees into belonging to a union unless done in accordance with § 179.12. We held that this section relates solely to unfair [fol. 93] labor practices by employers. We left open the question of whether or not acts done by a labor organization seeking to compel an employer to violate § 179.12(3) may also be enjoined. Inasmuch as we now uphold the trial court's finding that the picketing in this case was conducted for the purpose of coercing the employer to enter into a contract containing a union security clause contrary to § 179.12(3), the question we left open in the *The Dayton Company* case is squarely before us. To hold that for an employer to coerce or compel his employees to become members of a union against their will is an unfair labor practice which may be enjoined but that a union is free to bring economic pressure on such employer to do that which the law prohibits him from doing would place an employer in an unenviable position indeed. He could then refuse compliance with the union's demands, as the law would require him to do, and suffer a possible destruction of his business or, at the very least, serious economic loss, or he could comply with the union's demands and be held guilty of having committed an unfair labor practice under the law. In this sensitive area of balancing rights of labor and management in the field of labor relations, we do not believe that we need give the statutes of this state a construction which will lead to such an unfair and absurd result.

Many of the arguments advanced here were considered by the Indiana court in *Roth v. Local Union No. 1460 of Retail Clerks Union*, 216 Ind. 363, 24 N. E. (2d) 280. Indiana has an anti-injunction statute quite similar to our c. 185. The Indiana statute contains a declaration of public policy quite similar to that found in our statutes. In holding that picketing by a union to compel an employer to enter into a closed-shop agreement could be enjoined, the Indiana court said (216 Ind. 370, 24 N. E. [2d] 282):

“ * * * The statute here under consideration declares [fol. 94] that it is the public policy of this state that the individual unorganized worker shall be free to decline to associate with his fellows and that he shall be free from interference, restraint, or coercion on the part of his employer. This must mean that no labor union may demand that an employer require his employee to join such union, because no employer has the right to require an employee to join or refrain from joining a labor union. *Any person or group which undertakes to coerce an employer to do that which is contrary to the express public policy of this state thereby undertakes to compel the performance of an unlawful act. The lawful weapon of peaceful picketing may not be utilized to accomplish such an unlawful purpose.* It is quite immaterial that the things done to bring about the unlawful purpose were not *per se* unlawful.” (Italics supplied.)

In *Gazzam v. Building Service etc. Union*, 29 Wash. (2d) 488, 500, 188 P. (2d) 97, 103, 11 A. L. R. (2d) 1330, 1337,³ the Washington court, following the Indiana court, said:

“We hold that the acts of respondents, in so far as the picketing was concerned, were coercive—first, because they violated the provisions of Rem. Rev. Stat. (Sup.) § 7612-2, and, second, because they were in violation of the rules of common law as announced in the cases just approved.”

³ For the second decision in this case, see *Id.* 34 Wash. (2d) 38, 207 P. (2d) 699, affirmed, 339 U. S. 532, 70 S. Ct. 784, 94 L. ed. 1045.

On appeal to the United States Supreme Court, Building Service etc. Union v. Gazzam, 339 U. S. 532, 538, 70 S. Ct. 784, 788, 94 L. ed. 1045, 1051, the court said:

" * * * Picketing of an employer to compel him to coerce his employees' choice of a bargaining representative is an attempt to induce a transgression of this policy, and the State here restrained the advocates [fol. 95] of such transgression from further action with like aim. To judge the wisdom of such policy is not for us; ours is but to determine whether a restraint of picketing in reliance on the policy is an unwarranted encroachment upon rights protected from state abridgment by the Fourteenth Amendment."

Maine also has a statute quite similar to ours. In Pappas v. Stacey, 151 Me. 36, 41, 116 A. (2d) 497, 499, appeal dismissed, 350 U. S. 870, 76 S. Ct. 117, 100 L. ed. 770, the Maine court said:

"Under the statute enacted in P. L., 1941, c. 292, *supra*, the employee, or worker, is protected from 'interference, restraint or coercion by their employers or other persons * * *.' The worker must be left free from interference by employer or other persons in reaching a decision whether to join or refrain from joining a union. It follows necessarily that pressure cannot lawfully be directed against the employer to force him to interfere with the free choice of his employees. The plaintiff cannot lawfully be placed in a position where compliance with the strikers' demands requires action in violation of the law of the State."

International Brotherhood of Teamsters v. Vogt, Inc., 354 U. S. 284, 77 S. Ct. 1166, 1 L. ed. (2d) 1347, contains a comprehensive review of the decisions of the United States Supreme Court on this subject. The United States Supreme Court affirmed a decision of the Wisconsin court, Vogt, Inc. v. International Brotherhood of Teamsters, 270 Wis. 315, 321g, 74 N. W. (2d) 749, 753, where the Wisconsin court said:

“ * * * Picketing may be more than free speech. When it is conducted, as it was in this instance, upon a rural highway at the entrance to a gravel pit where an exceedingly small number of possible or probable patrons of the owner's business might pass and be influenced by the union's banner, it is more than the mere exercise of the right of free communication. One would be credulous, indeed, to believe under the circumstances that the union had no thought of coercing the employer to interfere with its employees in their right to join or refuse to join the defendant union. We have not the slightest doubt that it was the hope of the union that the presence of pickets at plaintiff's place of business would interfere with its operation and deprive it of delivery service, thus bringing pressure upon it to coerce its employees to join the union.”

[fol. 96] In affirming the decision of the Wisconsin court, the United States Supreme Court said (354 U. S. 294, 77 S. Ct. 1171, 1 L. ed. [2d] 1354):

“The Stacey case [Pappas v. Stacey, *supra*] is this case. * * * As in Stacey, the highest state court drew the inference from the facts that the picketing was to coerce the employer to put pressure on his employees to join the union, in violation of the declared policy of the State. (For a declaration of similar congressional policy, see § 8 of the National Labor Relations Act, 61 Stat. 140, 29 U. S. C. § 158.) The cases discussed above all hold that, consistent with the Fourteenth Amendment, a State may enjoin such conduct.”

Many other cases could be discussed, but we think that it is now evident that picketing, even though peacefully conducted, may go beyond the legitimate exercise of the right of free speech; that when its ultimate purpose is to coerce or compel an employer to commit an unlawful act the picketing itself becomes unlawful and may be enjoined; and that in finding what is the purpose of picketing the court may look through a veil of legitimacy and determine what the picketing is intended to accomplish. In so doing,

the trial court is permitted to draw reasonable inferences from the evidence the same as in any other field of litigation, and, when findings are based on inferences so drawn, they must stand if there is reasonable support for them in the record. Here, the court's finding that the purpose of the picketing was to compel or coerce the employer into committing an unfair labor practice under our law finds ample support in the record. That being true, the picketing itself becomes unlawful.

4. There remains then only the question of whether the injunction is prohibited by our Minnesota Anti-Injunction Act, Minn. St. c. 185. The public policy of this state is declared in § 185.08, and in the application of the so-called Anti-Injunction Act the legislature has specifically stated that interpretation should be based upon such public policy. As so declared, it reads as far as material [fol. 97] here:

“Whereas, under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the state, are hereby enacted.”

Obviously, the act was passed for the purpose of protecting the right of employees to have freedom of choice in

the selection of their bargaining agent and was not intended for the purpose of permitting the commission of unlawful acts. We do not believe that the act here enjoined comes within the category of those things which are protected by the act. See, for instance, the acts specified in § 185.10.

We have considered all other contentions of the parties, as well as authorities cited, but see no need of further extending this opinion. We are convineed that the trial court properly enjoined the conduct complained of.

Affirmed.

MR. JUSTICE OTIS, not having been a member of the court at the time of the argument and submission, took no part in the consideration or decision of this case.

[fol. 98]

STATE OF MINNESOTA, SUPREME COURT

38110

INTERLAKE STEAMSHIP COMPANY and
PICKANDS-MATHER & COMPANY, Respondents,

vs.

MARINE ENGINEERS BENEFICIAL ASSOCIATION, CHARLES L. PORTE, FRED L. BEATTY, JOE DOE and RICHARD ROE, LOCAL 101, Appellants.

JUDGMENT—Dated and Signed April 13, 1961

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the order of the Court below, herein appealed from, to-wit, of the District Court within and for the County of St. Louis be and the same hereby is in all things affirmed.

And it is further determined and adjudged that respondents herein, do have and recover of appellants herein the sum and amount of Three Hundred Seventy-Six and 20/100

Dollars, (\$376.20) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed April 13, 1961

By the Court, Attest: Mae Sherman, Clerk.

STATEMENT FOR JUDGMENT

Statutory Costs \$25.00 Printer \$351.20 Clerk \$.....
Acknowledgments \$..... Return \$..... Postage and
Express \$..... Appeal Bond \$..... Transcript \$.....
Total \$376.20

[fol. 99] Clerk's Certificate to foregoing transcript
(omitted in printing).

[fol. 100]

SUPREME COURT OF THE UNITED STATES

No. 166—October Term, 1961

MARINE ENGINEERS BENEFICIAL ASSOCIATION, et al.,
Petitioners,

vs.

INTERLAKE STEAMSHIP COMPANY, et al.

ORDER ALLOWING CERTIORARI—October 9, 1961

The petition herein for a writ of certiorari to the Supreme Court of the State of Minnesota is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.